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RE: TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION V. TOWN OF TELLICO PLAINS, TENNESSEE, APD Case No. 04.02-244954J

Enclosed is a/an *ORDER* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION,** ***Petitioner,*** ***v.*** **TOWN OF TELLICO PLAINS, TENNESSEE,** ***Respondent.***	**APD Case No. 04.02-244954J**

ORDER DENYING THE TOWN'S MOTION FOR COSTS

Currently pending before this tribunal is the Town's Motion for Costs.[1] The Department timely filed its response, and the motion is now ripe for disposition. The statute that controls the Town's motion is TENN. CODE ANN. § 4-5-325, which provides:

> (a)(1) When a state agency issues a notice to a person, local governmental entity, board, or commission for the violation of a rule or statute and the notice results in a contested case hearing, at the conclusion of the contested case hearing, the hearing officer or administrative judge may order the state agency to pay to the respondent the reasonable expenses incurred because of the notice, including a reasonable attorney's fee, if the hearing officer or administrative judge determines that:
>
> > (A)(i) The claims contained in the notice are not warranted by existing law nor by a nonfrivolous argument for the extension or modification of existing law; and
> >
> > (ii) The claims contained in the notice do not have evidentiary support; or
> >
> > (B) The state agency issued the notice to harass, cause unnecessary delay, or cause needless expense to the party issued the notice.
>
> (2) Subdivision (a)(1) is not satisfied simply by a state agency failing to prevail against the respondent.

[1] It is noted that both parties have filed a Notice of Appeal. However, this tribunal retains jurisdiction to address a motion for costs under TENN. R. CIV. P. 54.04(2).

As the Department notes in its response, and as noted in the Order Granting Partial Summary Judgment, the claims contained in the notice that gave rise to this action were warranted and were not frivolous because the Town violated certain regulatory requirements, and the claims contained in the notice had evidentiary support. Therefore, TENN. CODE ANN. § 4-5-325(a)(1)(A) is not satisfied. Similarly, there is no evidence in the record that would suggest that the Department issued the notice to "harass, cause unnecessary delay, or cause needless expense." TENN. CODE ANN. § 325(a)(1)(B). Rather, the evidence shows that the Department was fulfilling its statutory obligations. For these reasons and for the reasons set forth in the Department's response, which are incorporated herein by reference, the Town's Motion for Costs is **DENIED**.

It is so **ORDERED**.

This ORDER entered and effective this the **15th day of October 2025**.

MARK GARLAND
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE